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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,565	01/29/2004	Mary Mah Lee Ng	920094.401C1	9294
500 7590 02/12/2008 SEED INTELLECTUAL PROPERTY LAW GROUP PLLC 701 FIFTH AVE SUITE 5400 SEATTLE, WA 98104				
EXAMINER				
MOSHER, MARY				
ART UNIT		PAPER NUMBER		
1648				
MAIL DATE		DELIVERY MODE		
02/12/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/769,565

**Applicant(s)**

NG ET AL.

**Examiner**

Mary E. Mosher, Ph.D.

**Art Unit**

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 52-53 and 55-81 is/are pending in the application.
- 4a) Of the above claim(s) 55-70 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 52-53 and 71-80 is/are rejected.
- 7) ☒ Claim(s) 81 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The examiner of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1648, examiner Mosher.

#### ***Drawings***

Color photographs and color drawings are not accepted unless a petition filed under 37 CFR 1.84(a)(2) is granted. Any such petition must be accompanied by the appropriate fee set forth in 37 CFR 1.17(h), three sets of color drawings or color photographs, as appropriate, and, unless already present, an amendment to include the following language as the first paragraph of the brief description of the drawings section of the specification:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee.

Color photographs will be accepted if the conditions for accepting color drawings and black and white photographs have been satisfied. See 37 CFR 1.84(b)(2).

The drawings are objected to because they include drawings in color. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes

made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

#### ***Election/Restrictions***

Claims 55-70 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 4/20/2006.

This application contains claims 55-70 drawn to an invention nonelected with traverse in the reply filed on 4/20/2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144). See MPEP § 821.01.

#### ***Claim Rejections - 35 USC § 112***

Claims 52, 53, 71-80 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection involves the recitation "% sequence similarity." It is not clear how applicants define similarity. For example, does "similarity" include or exclude substitutions of similar amino acids? What amino acids

are considered "similar" to each other? This rejection could be obviated if the claims referred to sequence identity rather than sequence similarity.

Claims 52, 53, 71-80 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. These claims have been amended to recite specific % sequence similarity to amino acids 350-390 of SEQ ID NO:21. The specification discusses "substantial homology" at paragraph 0141, which includes discussion of 80%, 85%, 90%, 95%, 98% and 100% sequence similarity between two polynucleotide or polypeptide moieties. However, the specification and claims as filed only discuss "substantial homology" in relation to SEQ ID Nos. 19, 20, and 21, and do not discuss "substantial homology" to the fragment 350-390 of SEQ ID NO:21. Therefore, "at least 80% sequence similarity to amino acids 350 to 390 of a flavivirus envelope sequence as set for in SEQ ID NO:21" is seen as new matter, as is recitation of other percentages less than 100%. Applicant is invited to point to support for the variation in this specific sequence fragment, as support is not apparent to the examiner.

The following is not a rejection, but a comment on claim interpretation. Claim 53, as amended, further limits claim 52 by requiring that the flavivirus which is being controlled has an envelope protein which comprises a domain III which is at least 50% similar to SEQ ID NO:21 (referring to the definition of "substantially homologous" in specification paragraph 0141). Is this the limitation intended by applicant?

***Allowable Subject Matter***

Claim 81 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims (or otherwise rewritten as an independent claim).

The following is a statement of reasons for the indication of allowable subject matter: The amendments to the claims overcome the art rejection of record, and the prior art does not teach or suggest use of the 350-390 region of the West Nile envelope protein to block entry of a flavivirus into a cell. Bhardwaj et al (Journal of Virology 75:4002-4007, 2001) is cited as the closest prior art, which deals with a similar method using a tick-borne encephalitis virus (TBE) envelope domain III which is less than 80% identical to the corresponding West Nile sequence. Bhardwaj also indicates considerable uncertainty over whether the TBE results could be extrapolated to the mosquito-borne flaviviruses, which include West Nile and all of the viruses recited in applicant's claim 71. See page 4006. Therefore, it is concluded that less than a reasonable expectation of success existed for controlling entry of flaviviruses using the West Nile peptide. Enablement for the scope of "controlling entry of a flavivirus" is confirmed by the later publication by Chu et al (Journal of General Virology 86:405-412, 2005), which provides data regarding at least partial blockage of entry of two species of flavivirus using the peptide of claim 81. The peptide of claim 81 is also clearly described adequately by the disclosure as originally filed.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary E. Mosher, Ph.D. whose telephone number is 571-272-0906. The examiner can normally be reached on varying dates and times; please leave a message..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campbell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1648

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary E Mosher, Ph.D./  
Primary Examiner, Art Unit 1648

2/7/08